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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/582,471 08/15/00 FREUND

D 1826-017

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HOPGOOD CALIMAFDE KALIL & JUDLOWE
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NEW YORK NY 10165

EXAMINER

NASSER, R

ART UNIT

PAPER NUMBER

3736

DATE MAILED:

11/06/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/582,471

Applicant(s)
Freund et al

Examiner
Robert Nasser

Group Art Unit
3736



- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-15 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-4 and 6-10 is/are rejected.
- ☒ Claim(s) 5 and 11-15 is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of References Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Claims 5 and 11-15 are objected to under 37 CFR 1.75© as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claims and/or must be written in the alternative. See MPEP § 608.01(n). Accordingly, these claims not been further treated on the merits.

Claims 1-4 and 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is rejected for three reasons. First, it is unclear whether the pressure sensor measures pressure and orientation, or whether there is a separate orientation sensor. Second, the phrase "by means of" in line 4 makes the claim indefinite, it that it is unclear whether 35 USC 112, sixth paragraph is being invoked. Third, the claim is written in improper method claim format in that it is passive. Claims 2-4 are also rejected as being passive. In addition, the use of the phrase "in particular" in claims 3 and 4 renders the claims indefinite in that it is unclear whether the item(s) listed are exemplary or limiting in the claim. Claims 8 and 9 depend wholly or partially on claim 5. However, claims 8 and 9 are apparatus claims, while claim 5 is a method claim. The examiner presumes that applicant meant to depend these claims from claim 6 and they will be treated as such in this action. Claim 10 is rejected in that there is no antecedent basis for the motion sensing unit, as claim 10 depends from claim 7 and the motion sensing unit is recited in claim 9.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Ota et al US 5,778,879. Ota et al has a blood pressure measuring device 12 that includes a sensor for sensing the orientation of the arm that the blood pressure measuring device is on. The orientation sensor produces an output signal that is processed.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Ota et al JP 08215162. The second Ota reference is the Japanese language publication of the priority document to the US version of Ota. It has the same figures and presumably, the same disclosure, as such it has a blood pressure measuring device 12 that includes a sensor for sensing the orientation of the arm that the blood pressure measuring device is on. The orientation sensor produces an output signal that is processed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 2-3 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over .

Either Ota reference in view of Claxton III, et al. Ota uses the angle of inclination of the arm to determine a height relative to the heart and suspends measurement to reposition the arm if the arm is too high or low relative to the heart. Claxton III et al provides an automatic correction factor based on the height of the sensor relative to the heart. Hence, it would have been obvious to modify Ota et al to correct the blood pressure based on the height differential, to provide more accurate measurements and reduced measurement times.

Claims 4, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Ota reference in view of Claxton III, et al as applied to claims 2, 3, 7, 8 above, and further in view of Odagiri et al. Odagiri et al teaches that in order to be an accurate measurement, blood pressure measurements must be compensated for the effects of motion. Hence, it would have been obvious to modify the above combination to correct for motion's effects, so to increase the accuracy of measurement.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Riff shows a blood pressure measurement device that accounts for posture.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser Jr. whose telephone number is (703) 308-3251. The examiner can normally be reached on Monday-Thursday and alternate Fridays from 8:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cary O'Connor, can be reached on (703) 308-2701. The fax phone number for this Group is (703) 308-0758.

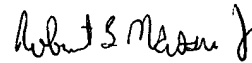
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Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [cary.o'connor@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.

RLN
October 18, 2001


ROBERT L. NASSER
PRIMARY EXAMINER